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SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

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| STATE OF ARIZONA, Plaintiff, -VS- STEVEN DEMOCKER, Defendant. | Case No. P1300CR201001325 UNDER ADVISEMENT RULING | FILED DATE: <u>12-29-2011</u> <u>4:32</u> O'Clock <u>P</u> .M. SANDRA K. MARKHAM, CLERK BY: <u>B. Chamberlin</u> Deputy |
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| HONORABLE GARY E. DONAHOE DIVISION VISITING JUDGE | BY: Cheryl Wagster Judicial Assistant DATE: December 6, 2011 |
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Following oral argument on December 22, 2011, the Court took under advisement the State's "Motion Pursuant to Rule 15.3 for Deposition of Witness John Sears and Order for Expited [sic] Hearing." The Court has considered the pleadings and the arguments of counsel. The State raises three subjects about which it would like to depose Mr. Sears – (1) the golf club head cover, (2) the anonymous email and voice-in-the-vent defense, and (3) the obtaining and notarization of a disclaimer to the life insurance proceeds.

Regarding topic number one, the July 27, 2010 stipulation regarding the golf club head cover entered into between the State and Defendant for the first trial establishes the chain of custody sufficient to allow admission of the head cover into evidence. Defendant's counsel concedes that the stipulation carries over to the upcoming trial. Therefore, the State has no need to depose Mr. Sears on the topic of the golf club head cover.

The State has taped statements of Mr. Sears regarding the anonymous email and voice-in-the-vent. The Court has not been provided a copy of those taped statement, but the State has not indicated what additional information it believes that it could acquire from Mr. Sears if he were to be deposed. Without that showing, the Court is reluctant to sanction a deposition on this topic because of the substantial risk that attorney-client or work product information would be sought. In addition, according the State's motion (see page 3, lines 3-5), Charlotte DeMocker will testify that she sent the so-called anonymous email to Mr. Sears. Her testimony, coupled with the transcribed statements Mr. Sears made to the court, appears sufficient to lay the foundation for admission of the email.

State v. DeMocker
P1300CR201001325
Page Two
December 29, 2011

Regarding the disclaimer of the life insurance proceeds, it appears to the Court that other witnesses – Katie DeMocker, Janice DeMocker and Renee Girard – can provide all the facts the State needs to support its claims against Defendant. (For example, see the rendition of facts set forth in the State's motion on pages 3 and 4 which appears to be based on the testimony of witnesses other than Mr. Sears.) Thus, without having had the benefit of hearing the trial testimony of those witnesses, it appears to the Court that Mr. Sears' testimony is unnecessary and would be cumulative. Therefore, the Court is reluctant to risk delving into possible attorney-client and work product matters in a deposition of Mr. Sears.

IT IS HEREBY ORDERED denying the State's "Motion Pursuant to Rule 15.3 for Deposition of Witness John Sears and Order for Expedited [sic] Hearing" without prejudice to the State's right to renew the motion after the Court has had the opportunity to hear the trial testimony of Katie DeMocker, Janice DeMocker, Charlotte DeMocker and Renee Girard, as well as the witnesses who will testify about the golf club head cover.

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